International Longshoremen's Association, Local No. 1830, AFL-CIO *and* Ryan-Walsh Stevedoring Company, Inc.

International Longshoremen's Association, Local No. 1833, AFL-CIO *and* Ryan-Walsh Stevedoring Company, Inc. and International Longshoremen's Association, Local No. 1497 and International Longshoremen's Association, Local No. 3000 and International Longshoremen's Association, Local No. 1802. Cases 15-CD-273 and 15-CD-274

June 16, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges by Ryan-Walsh Stevedoring Company, Inc., herein called Ryan-Walsh or the Employer, alleging that International Longshoremen's Association, Local No. 1830, AFL-CIO, herein called Local 1830, and International Longshoremen's Association, Local No. 1833, AFL-CIO, herein called Local 1833, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Ryan-Walsh to assign certain work to employees represented by Local 1830 and Local 1833, herein also called the Baton Rouge Locals, rather than to employees represented by International Longshoremen's Association, Local No. 1497, herein called Local 1497, International Longshoremen's Association, Local No. 3000, herein called Local 3000, and International Longshoremen's Association, Local No. 1802, herein called Local 1802.[1]

Pursuant to notice,[2] a hearing was held before Hearing Officer Lyn J. Beck on February 3, 4, and 5, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, the Baton Rouge Locals, Local 1497, Local 3000, and NOSA filed briefs.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Based upon the entire record in this case and the briefs of the parties, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is an Alabama corporation, licensed to do and doing business in the State of Louisiana, and is engaged in the business of providing stevedoring services for the loading and unloading of ships in interstate commerce. The parties stipulated, and we find, that during the preceding 12-month period, a representative period, the Employer received goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION

The parties stipulated, and we find, that the Baton Rouge Locals and the New Orleans Locals are labor organizations within the meaning of Section 2(5) of the Act.[3]

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In June or July 1980,[4] Ryan-Walsh contracted to perform stevedoring work for Delta Bulk Terminal, Inc., at its new grain transfer facility, herein called the Delta Bulk Terminal, located at Convent, Louisiana. Convent, located on the Mississippi River, is south of the Ascension-St. James Parish Line.

On September 1, Ryan-Walsh, as a member of NOSA, entered into collective-bargaining agreements with Local 1497 and Local 3000, which purported to cover "work performed . . . at the Port of New Orleans and all other terminals and facilities on the Mississippi River and adjacent or connecting waterways extending from the Gulf of Mexico up to the Port of Baton Rouge (Ascension-St. James Parish Line). . . ."

On November 1, after receiving written assurances from a vice president of the International Longshoremen's Association that an executive council committee of the International had deter-

[1] Local 1497, Local 3000, and Local 1802 shall be called collectively the New Orleans Locals. Local 1802, which was permitted to intervene at the hearing, was represented by counsel for Local 1497 and Local 3000. However, the brief submitted by said counsel purports to represent only Local 1497 and Local 3000.

[2] The notice of hearing also named the New Orleans Steamship Association (herein called NOSA), agent of the instant Employer and other stevedores for purposes of collective bargaining, as a party of interest to the dispute. We find no merit in the Employer's contention that NOSA is not a proper party to this proceeding and should have been precluded from participating in the hearing.

[3] The Hearing Officer reopened the record for the purpose of receiving written stipulations submitted by all parties after the close of the hearing, stipulating as to the labor organization status of Local 1802.

[4] All dates hereinafter refer to 1980, unless otherwise indicated.

mined that the Baton Rouge Locals' jurisdiction included Convent, Ryan-Walsh entered into a collective-bargaining agreement with the Baton Rouge Locals, which purported to cover "longshore work performed in the general area of Convent, Louisiana."

The Employer began operations at Convent on November 4, utilizing employees represented by the Baton Rouge Locals. Thereafter, Local 1497 and Local 3000 filed a grievance, alleging a breach of their contracts. When the Employer notified the Baton Rouge Locals that it might have to employ employees represented by the New Orleans Locals to perform the longshore work at Convent, the Baton Rouge Locals threatened to picket the Employer's Convent operations.

B. *Work in Dispute*

The work in dispute herein is the longshore work involved in the loading and unloading of grain at the Delta Bulk Terminal located at Convent, Louisiana.

C. *Contentions of the Parties*

NOSA contends that the Board has no jurisdiction over the instant case, because the filing of a grievance by Local 1497 and Local 3000 does not constitute coercion within the meaning of Section 8(b)(4)(D), nor should the Baton Rouge Locals' threat to picket constitute the necessary coercion because members of those Unions had already been assigned the work in dispute. In the alternative, NOSA argues that an outstanding Board certification, collective-bargaining agreements, and past practice in the area support the awarding of the work in dispute to employees represented by the New Orleans Locals. Local 1497 and Local 3000 filed a brief with the Board, essentially adopting the legal principles enunciated in NOSA's brief.

The Employer contends that the Baton Rouge Locals' threat to picket constitutes coercion within the meaning of the Act. The Employer further contends that its agreements with the New Orleans Locals are not applicable to the disputed work. Finally, the Employer argues that the International's award, industry practice, increased efficiency and economy, and its work assignment and preference favor awarding the disputed work to employees represented by the Baton Rouge Locals.

The Baton Rouge Locals contend that the work in dispute is properly assigned to employees represented by them. In support of this contention, they point to their collective-bargaining agreement with the Employer, their charters as clarified by the International, past area practice, and potential loss of jobs if the work is awarded to employees represented by the New Orleans Locals.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have no agreed-upon method for the voluntary adjustment of the dispute.

As set forth above, upon being informed by the Employer that it might have to award the work in dispute to employees represented by the New Orleans Locals, the Baton Rouge Locals notified Ryan-Walsh that should it use employees other than those represented by them they would picket the Employer's Convent operations. This threat to picket clearly constitutes a threat of serious economic harm, and is coupled with the stated aim of forcing the Employer to continue to assign particular work to employees represented by the Baton Rouge Locals rather than to employees represented by the New Orleans Locals. We find no merit in NOSA's argument that, because the Employer had already assigned the work to employees represented by the Baton Rouge Locals, their threat to picket should the Employer assign the work elsewhere does not constitute coercion within the meaning of the Act. See *Glaziers and Glassworkers Local Union No. 767 (Sacramento Metal & Glass Co.)*, 228 NLRB 200, 201 (1977). Accordingly, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated.

No party takes the position that there is an agreed-upon method for the voluntary settlement of the dispute herein.

Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors.

1. Certification and collective-bargaining agreements

NOSA, citing *Aluminum Line*, 9 NLRB 72 (1938), urges that the New Orleans Locals have been certified as collective-bargaining representatives of the employees performing the work in dispute. However, we note that the certification referred to pertains only to longshore work at the Port of New Orleans and does not encompass Con-

vent. Accordingly, we find that none of the labor organizations has been certified by the Board as collective-bargaining representative for a unit of the Employer's employees working at the Delta Bulk Terminal in Convent.

As mentioned above, the Employer currently has collective-bargaining agreements with both the Baton Rouge Locals and the New Orleans Locals. Each of these contracts covers the work in dispute. Consequently, the factor of collective-bargaining agreements does not favor an award of the disputed work to either group of employees.

2. Employer's assignment and preference

On November 4, the Employer commenced operations at Convent and assigned the disputed work to employees represented by the Baton Rouge Locals. The record indicates that the Employer maintains a preference for this assignment. These factors support an award of the work in dispute to the employees represented by the Baton Rouge Locals.

3. Economy and efficiency of operations

The Employer maintained at the hearing that factors of economy and efficiency support assignment of the disputed work to employees represented by the Baton Rouge Locals. Thus, to man the Delta Bulk Terminal, which utilizes relatively new technology, the Employer needs 9 longshoremen, a waterboy, and a clerk-an 11-person gang. Of the nine longshoremen, seven perform functions aboard an unloading barge and two aboard a receiving vessel. The Baton Rouge Locals' contract conforms exactly with these manning requirements.

Although not without doubt, the manning requirements under the New Orleans Locals' contracts appear considerably larger. For example, Local 3000's contract specifies eight-person longshoremen crews, four of which must work on the receiving vessel. Thus, to obtain the requisite 7 longshoremen on the barge, the Employer apparently must hire 16 longshoremen.[5]

Clearly, the Employer's use of employees represented by the Baton Rouge Locals would afford a more efficient utilization of manpower. Therefore, we find that the factors of economy and efficiency of operations favor assignment of the disputed work to employees represented by the Baton Rouge Locals.

[5] Even assuming Local 3000 would waive the 8-person gang size, the contract would still require 11 longshoremen—4 to man the receiving vessel. And, two of those four, according to the Employer, would serve no functional purpose, since the Delta Bulk Terminal can operate optimally with only two longshoremen on a receiving vessel.

4. Award of the International Longshoreman's Association

Although we do not consider this award controlling, we do consider it a factor in determining the proper assignment of the work in dispute. We note that this dispute is between two Locals of the same International Union, and that the International retains ultimate control over the various locals' jurisdiction. Pursuant to guidelines established by the International, the Baton Rouge Locals sought clarification of their geographical jurisdiction. The International resolved the dispute in favor of the Baton Rouge Locals. On October 22, the Employer received a telegram from the International stating that the Baton Rouge Locals had jurisdiction to negotiate for longshore work at Convent. Only after receiving this confirmation that the Baton Rouge Locals were authorized to negotiate concerning the Convent operations did the Employer enter into the contract with the Baton Rouge Locals. Based on the circumstances of this case (i.e., that the International specifically resolved the dispute in favor of the Baton Rouge Locals, and that the International gave notice to Ryan-Walsh of this resolution prior to the Employer's execution of its contract with the Baton Rouge Locals), we find that this factor favors awarding the work in dispute to the group of employees represented by the Baton Rouge Locals. See *Drywall Tapers and Finishers, Local 2006, a/w International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO; International Brotherhood of Painters and Allied Trades of the United States, and Canada, AFL-CIO*, 248 NLRB 626, 629–630 (1980).

5. Area practice

The record evidences that employees represented by the Baton Rouge Locals have worked within the geographical jurisdiction claimed by the New Orleans Locals, and that employees represented by the New Orleans Locals have worked within the geographical jurisdiction claimed by the Baton Rouge Locals. Consequently, we find that the factor of area practice favors awarding the disputed work to neither group of employees.

6. Relative skills

The parties point to evidence which they insist establishes that one group of employees is more capable of performing the disputed work than the other. Our examination of the record, however, convinces us that both groups of employees are equally capable of performing the disputed work.

Therefore, this factor favors neither group of employees.

7. Job impact

Assignment of the disputed work to employees represented by the New Orleans Locals would have a direct adverse impact upon the employment status of employees represented by the Baton Rouge Locals, since the latter group of employees now doing the work would have to be laid off. Assignment of the work to employees represented by the Baton Rouge Locals would have less impact upon the employment status of employees represented by the New Orleans Locals, since the New Orleans Locals' contracts with the Employer may provide longshoring work elsewhere. We therefore find that the factor of job impact favors the continued assignment of the work to employees represented by the Baton Rouge Locals. Cf. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (General Motors Corporation)*, 239 NLRB 365, 367 (1978).

8. Arbitration award

NOSA points out that, on January 12, 1981, an arbitrator, pursuant to the grievance filed by Local 1497 and Local 3000, held that the disputed work was covered by the Employer's contracts with those Unions. NOSA urges that this arbitration decision should be considered as a factor favoring award of the work to employees represented by the New Orleans Locals.

We are unable to agree with this argument. The Baton Rouge Locals were not contractually bound to accept the arbitration award and were not permitted to participate as parties in the arbitration proceeding. We therefore find that the arbitration award is of no significant help in the determination of the instant dispute.

Conclusion

Upon the record as a whole, and after consideration of all relevant factors involved, we conclude that the employees who are represented by the Baton Rouge Locals are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's assignment and preference, the award of the International Longshoremen's Association, economy and efficiency of operations, and job impact, all of which favor an award of the disputed work to employees represented by the Baton Rouge Locals. In making this determination, we are assigning the work to employees represented by the Baton Rouge Locals but not to those Unions or their members. The determination in this case is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

Employees of Ryan-Walsh Stevedoring Company, Inc., who are represented by International Longshoremen's Association, Local 1830, AFL-CIO, and International Longshoremen's Association, Local No. 1833, AFL-CIO, are entitled to perform the longshore work involved in the loading and unloading of grain at the Delta Bulk Terminal located at Convent, Louisiana.